United Nations S/2002/1262

Security Council

Distr.: General
19 November 2002
English
Original: English and French

Letter dated 23 October 2002 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

Acting within the scope of the powers vested in me and at the request of the Prosecutor, I am officially referring to you the failure of the Federal Republic of Yugoslavia to comply with its obligations to cooperate with the International Tribunal in accordance with article 29 of the Statute.

On 17 October 2002, the Prosecutor, Mrs. Del Ponte, informed me that the above-mentioned State was in serious breach of its international obligations in two areas. Firstly, it had failed to arrest or transfer the accused in its territory and, secondly, it had adopted a law on cooperation with the International Tribunal on 11 April 2002 which violates its commitments towards our institution.

I found the Prosecutor's arguments to be particularly persuasive and, for this reason, have decided to bring the matter before you.

As regards the first area, the Prosecutor and I are convinced that the Federal Republic of Yugoslavia is not cooperating in tracking down, arresting and transferring to The Hague certain of the accused, and we have strong grounds to believe that this also holds true for other accused as well. May I remind you that 11 accused — namely *Ratko Mladić* (indicted on 25 July 1995), *Miroslav Radić* (indicted on 7 November 1995), *Veselin Šljivančanin* (indicted on 7 November 1995), *Gojko Janković* (indicted on 18 June 1996), *Dragan Zelenović* (indicted on 18 June 1996), *Dragomir Milošević* (indicted on 24 April 1998), *Milan Lukić* (indicted on 21 October 1998), *Sredoje Lukić* (indicted on 21 October 1998), *Milan Milutinović* (indicted on 24 May 1999), *Vladimir Kovačević* (indicted on 22 February 2001) and *Vinko Pandurević* (indicted on 7 December 2001) — have still not been apprehended or brought before the International Tribunal. I wish to state that the indictments, arrest warrants and transfer orders for these accused have been served on the competent authorities of the Federal Republic of Yugoslavia on several occasions. As yet, we have still not seen any significant reaction on their part.

I therefore conclude that a more than reasonable period of time has passed without the State concerned having reported on the action taken in response to the indictments, arrest warrants and transfer orders issued by the International Tribunal

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and that, pursuant to rule 59 (B) of the Rules of Procedure and Evidence, I must therefore bring this matter before you.

Furthermore, may I remind you that, in keeping with the procedure set down under rule 61 of the Rules of Procedure and Evidence, the Tribunal issued international arrest warrants against *Miroslav Radić*, *Mile Mrkšić* and *Veselin Šljivančanin* on 3 April 1996, and against *Ratko Mladić* on 11 July 1996. Following those procedures, the Tribunal established that on each occasion the failure to serve the indictment was due to a failure or refusal of the Federal Republic of Yugoslavia to cooperate with the International Tribunal.

I further note that, in its resolution 1207 (1998) of 17 November 1998, the Security Council itself condemned the failure of the Federal Republic of Yugoslavia to cooperate in arresting three of the accused in the case IT-93-13a (known as the "Vukovar" case), that is to say, *Mile Mrkšić*, *Miroslav Radić* and *Veselin Šljivančanin*. Of these three accused, only *Mile Mrkšić* has appeared before the International Tribunal, and that was only after he handed himself in on 15 May 2002.

The Prosecutor and I also wish to state that article 39 of the law on cooperation adopted by the Federal Republic of Yugoslavia on 11 April 2002 contravenes international obligations to provide cooperation since it sets forth that any individual charged by the International Tribunal subsequent to the entry into force of the said law shall be tried by the Yugoslav courts. This is a flagrant violation of article 9 (2) of the Statute, which guarantees the primacy of the International Tribunal over the national courts. Furthermore, I underscore that rule 58 of the Rules of Procedure and Evidence explicitly provides that "[t]he obligations laid down in article 29 of the Statute shall prevail over any legal impediment to the surrender or transfer of the accused ... to the Tribunal which may exist under the national law or extradition treaties of the State concerned".

In addition, I wish to notify you that on 21 October 2002 Mrs. Del Ponte travelled to the Federal Republic of Yugoslavia, where she met with Mr. Goran Svilanović, Minister for Foreign Affairs of the Federal Republic of Yugoslavia, and Mr. Zoran Djindjić, Prime Minister of the Republic of Serbia, in an attempt to resolve the impasse on these two issues. This final action was to no avail.

As the President of the International Tribunal responsible for the proper accomplishment of the mission you entrusted to it, I must remind you that, on 23 July 2002, you expressly mandated us to concentrate our work on the trial of the main civilian, military and paramilitary leaders, in particular so as to be able to complete our trial activities by around the end of 2008. However, we will be in a position to achieve this only if the Federal Republic of Yugoslavia and, for that matter, all of the States concerned cooperate fully with the International Tribunal. Any delay in the arrests will irremediably preclude the International Tribunal from completing its work within the anticipated time frames.

I am bringing this matter before you officially today as I thought that the international community should be informed of the failure of the Federal Republic of Yugoslavia to honour its international commitments, at a juncture when the said community must take decisions crucial for the future of the country vis-à-vis its accession to the Council of Europe and the North Atlantic Treaty Organization's Partnership for Peace.

For all of these reasons, the Prosecutor and I request that you take all the measures necessary in order to force the Federal Republic of Yugoslavia to assume fully its international obligations.

(*Signed*) Claude **Jorda**